IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 875 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORMAMAD KARIM BHAGOD

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner

MR KG SHETH, Learned APP for Respondent No.1,2 &3.

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. The present petition has been filed by the petitioner abovenamed under Article 226 read with Sections 14, 19, an 21 of the Constitution of India for quashing and setting aside the order of externment dated

3.8.2000 passed in Externment Case No. 5 of 2000 by the second respondent and confirmed in Appeal by the third respondent no. 12.9.2000 under Section 60 of the Bombay Police Act, 1951 (for short "the said Act"). The petitioner abovenamed was served with notice under Section 59 of the said Act to show cause as to why he may not be externed out of the limits of the area indicated in the notice for a period of two years. The petitioner submitted himself to the said Court and after hearing, the learned Sub Divisional Magistrate, Jamnagar passed an order that the petitioner be externed out of the limits of area indicated in the order for a period of two years. The said matter was carried in appeal under Section 60 of the said Act and there, the appeal was dismissed. Hence, this petition has been filed by the petitioner.

2. In the present case, it has been contended that the order has been passed for externment of the petitioner without any ground or reason and the materials required to be supplied to the petitioner under Section 59 of the said Act were not supplied and, therefore, the petitioner was unaware as to the materials lying with the said Authority for externing the petitioner out of the limits of the area indicated in the notice. Therefore, the order is said to be illegal and, therefore, it is prayed that the said order be quashed and set aside.

3. On receiving the petition, rule was issued and in response to the service of rule, Mr. K.G.Sheth, learned APP appeared for respondents. I have heard the learned advocates for the parties and have perused the papers.

4. The learned advocate for the petitioner has argued that while issuing notice under Section 59 of the said Act, it was necessary for the externing authority to inform the petitioner as to the place and time of events which were against the petitioner. It has been contended that the said facts are found in para.1 of the notice at Annexure-A. The relevant portion can be found at page.9. There, it has been indicated that the petitioner used to give threats to the persons doing the business of fishing and he also used to give threats to them that the petitioner would take away the entire lot of fishes without giving price thereof. It has also been alleged against the petitioner that he used to visit the shops in village Salaya under the pretext that he was the President of Salaya Municipality. He used to tell persons in business that they were not making payment of octroi and under that pretext, he was demanding money by giving threats. It has been contended that the names of the witnesses from whom the aforesaid informations were

collected may not be disclosed to the petitioner. But approximate time and place with respect to the aforesaid events were required to be conveyed to the petitioner but the same have not been conveyed to the petitioner. That therefore the petitioner was unaware as to what he was required to meet with during the proceedings before the learned Sub Divisional Magistrate.

5. On this point, the learned advocate for the petitioner has relied upon a decision of this Court dated 25.9.2000. There, it has been observed that when the allegations are vague in nature, same cannot be basis for the externment of the person concerned. In the present case, it has not been made clear that as to when the aforesaid events took place and what was the aforesaid event. The allegations made against the petitioner are of general nature and character and, therefore, the petitioner could not meet with the said case on account of vagueness of the allegations made against him. The petitioner could not be externed out of the limits of the area indicated in the notice as well as in the order on the basis of vague allegations. As said above, the allegations are vague and of general nature, it was not possible for the petitioner to make out as to what was the material available with the externing authority.

6. In that view of the matter, when the allegations are of general nature, they cannot be based for externment of the petitioner. Consequently, the order passed on said consideration has to be treated to be illegal. This aspect has not been properly appreciated in appeal. Therefore, the order in appeal is equally illegal.

7. The result is that the original order as well as the order in appeal are both no sustainable. Therefore, both the orders are required to be quashed and set aside.

8. In that view of the matter, this petition is allowed. The order of externment dated 3.8.2000 passed by the Sub Divisional Magistrate, Jamnagar in Externment Case No.5 of 2000 and confirmed in Appeal by the Deputy Secretary, Home Department, Government of Gujarat under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.P.Buch,J)

(vipul)